

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC R. FIERRO, and
AUGUSTIN F. GRANADO,

Plaintiffs,

vs.

No. CV 18-00980 JB/KBM

JERRY ROARK, et al.,

Defendants.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on the pro se handwritten Motion to Joinder Into Cause's Pursuant to N.M.R.A. Rule 1-020 filed by Plaintiffs Eric R. Fierro and Augustin F. Granado (Doc. 1). The Court determines that the pro se filing is deficient because it is not in proper form and Plaintiffs have not paid the \$400 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs.

Plaintiffs state that their filing is made pursuant to N.M.R.A. Rule 1-020. However, N.M.R.A. Rule 1-020 is a New Mexico state court rule and has no application in federal court. Further, Plaintiffs' filing appears to assert civil rights and breach of contract claims against New Mexico prison officials relating to their conditions of confinement at New Mexico correctional facilities. (Doc. 1 at 2-25). However, a civil rights complaint under 42 U.S.C. § 1983 is the exclusive vehicle for vindication of substantive rights under both the Constitution and § 1981. See, *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (claims against state actors for violation of § 1981 must be brought under 42 U.S.C. § 1983). The filing is not in proper form to assert civil rights claims.

In addition, under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the federal filing fee from the Plaintiffs or authorize Plaintiffs to proceed without prepayment of the fee. Plaintiffs have not paid the \$400.00 filing fee or submitted an application to proceed under § 1915.

Plaintiffs must cure the deficiencies if they wish to pursue their claims. The deficiencies must be cured within thirty (30) days of entry of this Order. Plaintiffs must include the civil action number, CV 18-00980 JB/KBM, on all papers he files in this proceeding. If Plaintiffs fail to cure the deficiencies within thirty (30) days, the Court may dismiss this proceeding without further notice.

IT IS ORDERED that, within thirty (30) days of entry of this Order, Plaintiffs Eric R. Fierro and Augustin F. Granado cure the deficiencies by (1) paying the \$400 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs and (2) filing a prisoner civil rights complaint in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to Plaintiffs, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with instructions.



UNITED STATES MAGISTRATE JUDGE